IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A No. 2183 of 2005 (O&M)
Date of Decision : 16.11.2007

Kundan Lal & Anr.

.....Appellants

Versus

Prem Chand & Anr.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Sudhir Aggarwal, Advocate
for the appellants.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff appellant No.1 for declaration with a consequential relief for permanent injunction, has been ordered to be decreed.

The plaintiff brought a suit on the plea that he was owner in possession of the residential house along with Chabutra, Shamlat Chowk, rasta marked by letters C.D.E.I.J.K.L.M.N.O.P. shown in the site plan situated within the abadi of village Khedla Tehsil Nuh, which was bounded as East : Rasta Aam, West : Open Land and North : house of Ahmad son of Mir Khan and Jaan Mohd. son of Basaudin and then house of Mola and Sher Mohd.

It was claimed that disputed portion marked by letters A.B.C.D.E.F. shown in red colour in the site plan was part and parcel of shamlat chowk and rasta/poli. It was the case of the plaintiff that the defendants No.1 & 2 had purchased the land from defendant No.3 vide

registered sale deed dated 22.7.1994. The sale deed showed excess dimensions marked by letters A.B.C.D.E.F.shown in red colour as the said area is the part and parcel of rastra/poli and shamilat which is being used by the plaintiff.

The parties led evidence and report of the Local Commissioner was called. On the basis of evidence brought on record the learned Courts below have recorded a concurrent findings of fact that the disputes area was part and parcel of rasta/poli and shamlat chowk and, therefore, the appellant/defendant was not entitled to seek possession or encroach upon the said area.

The learned counsel for the appellant contends that the findings of the learned Courts below cannot be sustained as the same is based only on the report of the Local Commissioner and no documentary evidence was produced on record to show that the the disputed portion is part and parcel of shamilat chowk. This plea of the learned counsel for the appellant cannot be accepted as the learned Courts below have not decided the case on the basis of report of the Local Commissioner but also on other evidence brought on record. It is admitted case that area was abadi of the village and thus the best evidence available with the plaintiff has been brought on record and believed by the learned courts below.

No ground is made out to interfere with the concurrent findings of fact recorded by the learned Courts. No question of law muchless substantial question of law arises for consideration in this appeal.

No merits.

Dismissed.

16.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**